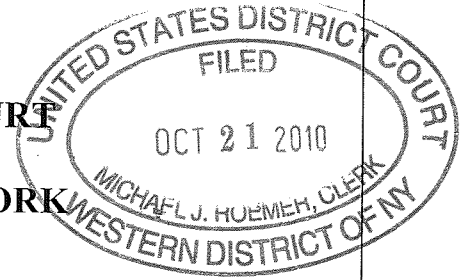


UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF NEW YORK



KAREN M. DETTELIS,  
Plaintiff

v.

WELTMAN WEINBURG & REIS  
CO., L.P.A.,  
Defendant

10 CV 831-*S*  
Civil Action No.:  
COMPLAINT AND DEMAND FOR  
JURY TRIAL  
(Unlawful Debt Collection Practices)

**COMPLAINT**

KAREN M. DETTELIS ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against WELTMAN WEINBURG & REIS CO., L.P.A. ("Defendant"):

**INTRODUCTION**

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

**JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

6. Plaintiff is a natural person residing in New York with a mailing address of 23 Smith Ave., Delevan, NY 14042.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection organization with an office located at 1400 Koppers Building, 436 Seventh Ave., Pittsburgh, PA 15219.

9. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute that prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and

1 provides for specific consumer rights. 15 U.S.C. § 1692k. The operative  
2 provisions of the FDCPA declare certain rights to be provided to or claimed by  
3 debtors, forbid deceitful and misleading practices, prohibit harassing and abusive  
4 tactics, and proscribe unfair or unconscionable conduct, both generally and in a  
5 specific list of disapproved practices.

6 12. In particular, the FDCPA broadly enumerates several practices  
7 considered contrary to its stated purpose, and forbids debt collectors from taking  
8 such action. The substantive heart of the FDCPA lies in three broad prohibitions.  
9 First, a “debt collector may not engage in any conduct the natural consequence of  
10 which is to harass, oppress, or abuse any person in connection with the collection  
11 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,  
12 deceptive, or misleading representation or means in connection with the collection  
13 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair  
14 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §  
15 1692f. The FDCPA is designed to protect consumers from unscrupulous  
16 collectors, whether or not there exists a valid debt, broadly prohibits unfair or  
17 unconscionable collection methods, conduct which harasses, oppresses or abuses  
18 any debtor, and any false, deceptive or misleading statements in connection with  
19 the collection of a debt.

20 13. In enacting the FDCPA, the United States Congress found that  
21 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt  
22 collection practices by many debt collectors,” which “contribute to the number of  
23 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of  
24 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing  
25 laws and procedures for redressing debt collection injuries to be inadequate to  
protect consumers. 15 U.S.C. § 1692b.

1           14. Congress enacted the FDCPA to regulate the collection of consumer  
2 debts by debt collectors. The express purposes of the FDCPA are to “eliminate  
3 abusive debt collection practices by debt collectors, to insure that debt collectors  
4 who refrain from using abusive debt collection practices are not competitively  
5 disadvantaged, and to promote consistent State action to protect consumers against  
6 debt collection abuses.” 15 U.S.C. § 1692e.

7  
8                                   **FACTUAL ALLEGATIONS**

9           15. At all pertinent times hereto, Defendant was allegedly hired to collect  
10 a consumer debt allegedly owed by Plaintiff.

11  
12           16. The alleged debt at issue arose out of transactions which were  
13 primarily for personal, family, or household purposes.

14           17. Defendant, first contacted plaintiff via telephone call, attempting to  
15 collect the alleged debt, in or around April 2010.

16           18. During that initial correspondence Defendant refused to inform  
17 Plaintiff of the identity of the original creditor.

18           19. Plaintiff never received notification in writing within 5 days of initial  
19 contact by Defendant of her right to dispute and/or to obtain validation of the  
20 alleged debt.

21           20. During April 2010, Defendant called Plaintiff almost every day.

22           21. During the above time frame, Plaintiff received on average, more  
23 than two (2) collection calls a day from Defendant, sometimes receiving more than  
24 four (4) calls per day.

25           22. Defendant, representing that it was seeking to acquire location  
information contacted three (3) of Plaintiff’s friends and family members

1 Defendant when it already knew it possessed accurate location information, and  
2 as such Plaintiff believes such contacts were made solely for harassment and  
3 embarrassment of Plaintiff.

4 23. Defendant informed the above-identified third persons that Plaintiff  
5 “owes a debt” and identified itself as a debt collector.

6 24. Defendant has continued to contact Reginald Goodrich even after  
7 being explicitly advised that Mr. Goodrich is elderly, battling cancer, and wishes  
8 not to be contacted.

9 25. Defendant has also continued to contact Plaintiff, even after being  
10 told not to do so, solely to harass Plaintiff.

11 26. During telephone conversation, Defendant has accused Plaintiff of  
12 being a “liar”.

13 27. Defendant has further stated to Plaintiff that she is “living a lie”, and  
14 that her husband “should be ashamed” of her.

15 28. During one particular call placed at 8:01 a.m, Plaintiff informed  
16 Defendant that she did not wish to receive the call at that hour, but Defendant’s  
17 collector refused to terminate the phone call.

18 29. Very often, Defendant would place calls without disclosure of its  
19 identity.

20 30. Defendant threatened legal action but as of the date of this filing, has  
21 not to Plaintiff’s knowledge, initiated suit.

22 31. Defendant on one occasion threatened to enter a judgment if Plaintiff  
23 did not pay within a week.

24 32. Defendant demanded a bank account number from Plaintiff.

25 33. During a telephone call in April, Defendant used profane language  
when speaking to Plaintiff’s husband, and told husband that his wife is a liar.

34. Defendant's actions in attempting to collect the alleged debt were not only harassing and bothersome, but also deceptive and a significant invasion of privacy.

### CONSTRUCTION OF APPLICABLE LAW

35. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

36. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

37. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a

1 false statement may be obviously false to those who are trained and experienced  
2 does not change its character, nor take away its power to deceive others less  
3 experienced.” Id. The least sophisticated consumer standard serves a dual  
4 purpose in that it ensures protection of all consumers, even naive and trusting,  
5 against deceptive collection practices, and protects collectors against liability for  
6 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at  
7 1318.

8  
9 **COUNT I**  
10 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**  
11 **ACT**

12 31. In its actions and methods to collect a disputed debt, Defendant  
13 violated the FDCPA in the following ways:

- 14 a. Stating that Plaintiff owes a debt in communicating with  
15 persons other than Plaintiff for the purpose of acquiring  
16 location information, in violation of 15 USC § 1692b(2);  
17 b. Communicating with persons other than Plaintiff for the  
18 purpose of acquiring location information more than once  
19 without Plaintiff’s permission to do so, in violation of 15  
20 USC § 1692b(3);  
21 c. Without the permission of Plaintiff, communicating with  
22 persons other than Plaintiff, her attorney, a consumer  
23 reporting agency, the creditor, the attorney of the creditor, or  
24 the attorney of the debt collector, in violation of 15 USC §  
25 1692c(b);  
d. Engaging in conduct of which the natural consequence is to  
harass, oppress, or abuse Plaintiff in connection with the



1 collection of the alleged debt, in violation of 15 USC §  
2 1692d;

3 e. Using obscene and profane language, and language of which  
4 the natural consequence is to abuse the hearer, in violation of  
5 15 USC § 1692d(2);

6 f. Causing a telephone to ring or engaging Plaintiff in telephone  
7 conversation repeatedly or continuously with intent to annoy,  
8 abuse, or harass, in violation of 15 USC § 1692d(5);

9 g. Placing telephone calls without meaningful disclosure of the  
10 caller's identity, in violation of 15 USC § 1692d(6);

11 h. Using false, deceptive, and misleading representation or  
12 means in connection with the collection of the alleged debt, in  
13 violation of 15 USC § 1692e;

14 i. Falsely representing that Defendant is an attorney, and that  
15 communication is from an attorney, in violation of 15 USC §  
16 1692e(3);

17 j. Threatening to take action that cannot legally be taken or is  
18 not intended to be taken, in violation of 15 USC § 1692e(5);

19 k. Using false representation and deceptive means to attempt to  
20 collect the alleged debt, in violation of 15 USC § 1692e(10);

21 l. Failing to, within five days after the initial contact with  
22 Plaintiff in connection with the collection of the alleged debt,  
23 send the consumer a written notice containing any of the  
24 following: the amount of the debt, the name of the creditor to  
25 whom the debt is owed, a statement that unless the consumer  
disputes the validity of the debt within 30 days of the initial



1 communication the debt will be assumed to be valid, a  
2 statement that is the consumer disputes the debt in writing  
3 within the 30 day period the debt collector is required to  
4 verify the debt, a statement that, upon written request within  
5 the 30 day period, the debt collector will provide the  
6 consumer with the name and address of the original creditor,  
7 in violation of 15 USC § 1692g(a), 15 USC § 1692g(a)(1), 15  
8 USC § 1692g(a)(2), 15 USC § 1692g(a)(3), 15 USC §  
9 1692g(a)(4), 15 USC § 1692g(a)(5);

10 m. By acting in an otherwise deceptive, unfair and  
11 unconscionable manner and failing to comply with the  
12 FDCPA.

13 32. As a result of the above violations of the FDCPA, Defendant is liable to  
14 Plaintiff in the sum of Plaintiff's actual damages, statutory damages, and  
15 attorney's fees and costs.

16 WHEREFORE, Plaintiff, KREN M. DETTELIS, respectfully prays for a  
17 judgment as follows:

- 18 a. All actual compensatory damages suffered pursuant to 15  
19 U.S.C. § 1692k(a)(1);  
20  
21 b. Statutory damages of \$1,000.00 for each violation of the  
22 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);  
23  
24  
25

- 1 c. All reasonable attorneys' fees, witness fees, court costs and  
2 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.  
3 § 1693k(a)(3); and  
4  
5 d. Any other relief deemed appropriate by this Honorable Court.

6 **DEMAND FOR JURY TRIAL**


7 PLEASE TAKE NOTICE that Plaintiff, KAREN M. DETTELIS, demands  
8 a jury trial in this case.  
9  
10

11 **CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

12 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in  
13 controversy is not the subject of any other action pending in any court, arbitration  
14 or administrative proceeding.  
15

16 RESPECTFULLY SUBMITTED,  
17 KIMMEL & SILVERMAN, P.C.  
18

19 Date 10-13-10

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